

(6) Approving or inspecting an embryo or semen collection center or the animals in it; and

(7) Other export or embarkation services not specified elsewhere in this part.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) \$65.00 per hour for weekdays and holidays; and

(2) \$74.00 per hour for Sundays.

19. Section 130.50 would be amended as follows:

a. In paragraph (b)(1), by redesignating footnote 8 as footnote 9 and revising it to read as set forth below.

b. In paragraph (b)(2), at the end of the sentence, by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

c. In paragraph (b)(3), immediately before the word "or", by adding "drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA".

d. By revising paragraph (b)(4) to read as set forth below. § 130.50 Payment of user fees.

* * * * *

(b) * * *

(4) Credit cards (VISA [*Insert trademark symbol*] or MasterCard [*Insert trademark symbol*]) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.⁹

* * * * *

Done in Washington, DC, this 22nd day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-12999 Filed 5-25-95; 8:45 am]

BILLING CODE 3410-34-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Non-Manufacturer Rule

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its size regulations to require that small business non-manufacturers provide the product of a small business manufacturer on small business set-aside contracts or section 8(a) contracts, regardless of the dollar value of the contract. Under certain conditions, a waiver of this requirement may be granted by the SBA.

DATES: Comments must be submitted on or before July 25, 1995.

ADDRESSES: Send comments to: Gene VanArsdale, Acting Assistant Administrator for Procurement Policy and Liaison, U.S. Small Business Administration, 409 Third Street, SW, Mail Code 6252, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:

Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205-6618.

SUPPLEMENTARY INFORMATION: In order to qualify as small for purposes of a small business set aside or section 8(a) procurement of manufactured or processed products, the Small Business Act (15 U.S.C. 637(a)(17)) and SBA's implementing size regulations (13 CFR 121.906 and 121.1106) require non-manufacturers to provide the product of a domestic small business manufacturer.

An offeror which is not the manufacturer (1) must itself be a small business concern, and (2) must also supply a product manufactured by a domestic small business concern. This requirement is commonly referred to as SBA's "non-manufacturer rule." Compliance with the non-manufacturer rule has been a long-standing regulatory requirement for the small business set-aside and 8(a) programs, and a part of the Small Business Act since 1988. Pursuant to the Act, the non-manufacturer rule may be waived by the SBA if SBA determines that no small business manufacturer can reasonably be expected to offer a project meeting the specifications required by the solicitation, or if SBA determines that no small business manufacturer is available to participate in the Federal market. Under the SBA's existing size regulations, the non-manufacturer rule has not been extended to supply contracts processed under "Small Purchase Procedures."

Recent legislation, however, has rescinded the Small Purchase Procedures. Thus, the exemption to the non-manufacturer rule for procurements processed under those procedures no longer exists. This action was part of the Federal Acquisition Streamlining Act of 1994 (FASA) that was signed into law on October 13, 1994. Among its many

changes, FASA requires that simplified acquisition procedures be developed for contracts between \$2,500 and \$100,000, and that all contracts between \$2,500 and \$100,000 be reserved exclusively for small concerns unless the contracting officer is unable to obtain offers from at least two small business concerns that are competitive in price and quality.

The SBA is proposing to apply the nonmanufacturer rule to supply contracts that are reserved for small business (i.e., set aside for small business or reserved for the 8(a) program) regardless of the dollar value of the contract. This policy, adopted, would consistently apply the non-manufacturer rule to small business set-aside and 8(a) contracts for supplies issued under all procurement methods, including those processed under the new Simplified Acquisition Procedures. The SBA believes that this rule would further the overall purpose of the FASA, which is to simplify Federal procurement procedures. Applying different rules according to dollar value of contracts would further complicate the procurement process. The impact of this proposed rule would effectively be limited to those procurements ranging in value between \$2,500 and \$25,000 that were previously exempt from the non-manufacturer rule as procurements processed under Small Purchases Procedures. (Note: Procurements of \$2,500 and below will be processed under new micro-purchase procedures and will not be reserved for small business competition. Thus, the proposed rule would not apply.)

The SBA does not believe an exception to the non-manufacturer rule based on the dollar value of contract is needed. Public Law 100-656 amended the Small Business Act by statutorily requiring the non-manufacturer rule. As indicated above, the legislation also included a provision granting SBA the authority to waive the nonmanufacturer rule when (1) there is *no* small business manufacturer for that particular class of products in the federal market (class waiver); or when (2) there is *no* small business manufacturer which can meet the specifications of a particular contract (individual waiver). The waiver provision addresses those situations where the application of the nonmanufacturer rule is inappropriate due to the absence of small business manufacturers in the Federal market. By way of illustration, examples of waivers to the non-manufacturer rule are described by the two following cases.

1. *Example of class waiver.* There are no small business manufacturers of four-wheel drive utility trucks.

⁹ A list of Animal Import Centers and APHIS offices that accept credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737-1231.

Therefore, the SBA has issued a waiver to the nonmanufacturer rule for this class of product. Because there is no small business manufacturer in the Federal market, a small business offeror may provide a product of a large business manufacturer of four-wheel drive trucks on contracts set aside for small businesses.

2. *Example of an individual waiver.* There are occasional instances when the government requires a brand-name product. For example, a government office may need to purchase computers which are compatible with computers already used in that office. If there is no compatible unit manufactured by a small business concern in the Federal market, the SBA may grant an individual waiver at the request of the contracting officer so that a small business offeror may provide a product manufactured by a large business for that particular procurement even though set aside for small businesses.

The SBA believes that the implementation of the non-manufacturer rule contained in this proposed rule is the application which will best assist small business, minimize complexity for procurement, and most clearly comply with the congressional purposes of the Small Business Act. This proposed rule would ensure that, on procurements reserved for small business, a substantial value of the contract is performed by a small business. Absent the non-manufacturer rule, a small business non-manufacturer can obtain a small business contract and, in turn, provide a product produced by a large business manufacturer. In that case, the benefits to small business of such an award are limited to the mark-up of the small business non-manufacturer or dealer. On the other hand, when a small business provides the product, directly or through a dealer, most of the value of the contract is realized by a small business. This fosters increased employment and growth for small business manufacturers in the economy.

The SBA notes that the Federal government's implementation of electronic commerce will make it easier for small business manufacturers to enter into the government procurement arena. Through electronic commerce, they will be able to identify Federal contracting opportunities and become potential sources for Federal agencies and small business dealers. Requiring small business products on all set-aside and 8(a) contracts will help such manufacturers do a larger amount of business in the federal procurement arena.

Alternative Approaches

The SBA considered two alternatives with regard to application of the non-manufacturer rule to small business set-aside or 8(a) contracts that will be processed under the Simplified Acquisition Procedures:

(1) A rule that would not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of \$100,000 or less, and

(2) A rule that would not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of \$25,000 or less.

Each of these approaches has advantages and disadvantages which are discussed below.

The first alternative, which would not apply the non-manufacturer rule to supply contracts on "Simplified Acquisition Procedures" until the simplified acquisition threshold of \$100,000, would expand the number of contracts in which a small business non-manufacturer or dealer could supply the product of any domestic manufacturer large or small. Existing rules exempt from the non-manufacturer rule only those contracts which are \$25,000 or less in value, and which are processed under "Small Purchases Procedures." Under the first alternative, small business set-aside and 8(a) contracts of between \$25,000 and \$100,000, would no longer be subject to the nonmanufacturer rule.

This approach would appear to be consistent with a major purpose of the FASA, which is to simplify the formal procurement process. It would simplify procurement procedures on relatively low dollar value contracts and would facilitate the evaluation and award of these contracts (since the small business status of a subcontractor to a small offeror would no longer be relevant).

The SBA is concerned, however, that this alternative might have an adverse impact on small business manufacturers. Without the non-manufacturer rule, large manufacturers could simply supply their products to the government indirectly (through small business offerors that won the contract). Small manufacturers would then, in effect, be competing with large manufacturers on a large number of contracts ostensibly reserved for small business. Based on contract award data between fiscal years 1989 and 1993, the SBA estimates that over \$500 million has been awarded annually to small manufacturers on small business set-aside and 8(a), contracts ranging in size between \$25,000 and \$100,000. A failure to apply the non-manufacturer rule to these contracts would cause a

shift in contract revenues from small manufacturers to large manufacturers that is likely to be well into the multi-million dollar range. As a consequence, SBA elected not to propose this approach.

The second alternative is to not apply the non-manufacturer rule to small business set-aside and 8(a) contracts of \$25,000 or less—the level of the former Small Business Purchase threshold. However, under this approach, all other small business set-aside and 8(a) contracts, including those processed under the new Simplified Acquisition Procedures, would be subject to the non-manufacturer rule (unless an administrative waiver were issued for the class of product or for specific procurement). This alternative would, in effect, maintain the current application of the non-manufacturer rule to small business set-aside procurements notwithstanding enactment of FASA.

Under this approach, small business manufacturers would not be subject to new competition from large business (as could occur under the first alternative approach) and small business offerors would continue to have contract opportunities below \$25,000 exempt from the rule so they could supply the product of a large manufacturer. In addition, a new procurement requirement would not be added to smaller-sized procurements of up to \$100,000 at a time when the Federal government is attempting to streamline all procurement procedures.

The disadvantage of this approach is that it would add unnecessary complexity to the new Simplified Acquisition Procedures. A contracting officer would have different requirements to follow depending upon whether the value of a contract exceeded \$25,000 or not. This would undercut the overall purpose of FASA, which is to simplify the procurement process.

The SBA believes a uniform approach with regard to the application of the non-manufacturer rule to small business set-aside contracts is more in-line with the spirit of the procurement reform legislation. In this regard, it believes the proposed rule provides the best level of assistance to small businesses, especially for small business manufacturers.

The SBA welcomes public comments on the proposed rule, and will continue its evaluation of all of the alternative approaches to application of the non-manufacturer rule. Comments on any alternative to the proposal, including those discussed above, should present the reasons why it is preferable to the

proposal, and should address the following concerns: (1) The interaction between SBA programs and the procurement process, including the various statutory authorities impacting this process; (2) the effect on small business participation; and (3) the prospects for significant new entrants into the Federal procurement market.

Compliance With Executive Orders 12866, 12778 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

The SBA believes that this proposed rule, if finalized, would have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. In addition, this rule constitutes a significant rule for the purpose of Executive Order 12866. A regulatory flexibility analysis follows:

(1) Description of Entities to Which This Rule Applies

With eleven million small purchase contract actions during FY 1993, the SBA estimates that tens of thousands of small manufacturers active in Federal contracting potentially could be impacted by this rule. In addition, thousands of non-manufacturers or dealers providing manufactured products under small purchase procedures could be impacted by this rule since their product mix and small business status could be affected.

(2) Description of Potential Benefits of This Rule

A decision to apply the non-manufacturer rule to supply contracts in the \$2,500 to \$25,000 range of contract size would have an estimated impact on small business participation in excess of \$100 million. During FY 1993, \$7.9 billion was awarded to small business concerns under small purchase procedures. Although available data would not permit the SBA to determine the extent to which Federal agencies utilize small business non-manufacturers to satisfy contracts awarded as small purchases, or to identify which contracts are in the \$2,500 to \$25,000 range affected by this rule, the magnitude of the \$7.9 billion figure suggests that a decision to apply the non-manufacturer rule waiver to small business procurements in this dollar range would likely have an annual small business impact exceeding \$100 million.

(3) Description of the Potential Costs of This Rule

The SBA believes the procurement costs to the Federal government would be minimal. All set-aside and 8(a) contracts are expected to be awarded at no more than fair-market value. If reasonable pricing does not exist, the procuring agency should issue an unrestricted solicitation. There should be no significant increased costs to the government.

(4) Description of the Potential Net Benefits of the Rule

If the proposed rule is adopted, the SBA estimates that tens of thousands of small manufacturers would provide the products that formerly have been provided by large manufacturers. At a minimal cost to the government, small business participation in the Federal market would likely be increased. The direct impact would be entirely concentrated in the area of Federal procurement.

(5) Legal Basis for This Rule

The legal basis for this rule is sections 3(a), 5(a), 8(a), and 15(a) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(a).

(6) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. The SBA has been given exclusive statutory jurisdiction in establishing size standards.

(7) Significant Alternatives to This Rule

In compliance with the Regulatory Flexibility Act, the SBA has examined alternatives to the proposed application of the non-manufacturer rule. These are discussed in the supplementary information. The public is invited to comment on the proposed rule and alternative approaches to assist the SBA in developing a final rule.

For purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For the reasons set forth above, Title 13, Code of Federal Regulations (CFR), is amended as set forth below.

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c); and Pub. L. 102-486, 106 Stat. 2776, 3133.

§ 121.906 [Amended]

2. Section 121.906(d) is removed.

Dated: April 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95-12646 Filed 5-25-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-SW-06-AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R22 series helicopters, that currently requires an inspection and repetitive visual checks for slippage of the tail rotor (T/R) drive and replacement of the T/R gearbox, if necessary. This action would require disassembly of the T/R gearbox to verify the installation of the input and output shaft keys (keys) between the input and output pinions and their respective shafts. This proposal is prompted by two incidents in which the key was not installed between the output shaft and the output pinion during assembly of the T/R gearbox at Robinson Helicopter Company. The actions specified by the proposed AD are intended to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-06-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd.,